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THE PODESTÀ OF SIENA

AMONG the almost infinite diversities which mark the constitutional evolution of the medieval communes of Italy, it is possible to distinguish three well-defined periods of development, through which they all passed. Having achieved self-government and virtual sovereignty under the magistracy of the consuls, they gave themselves a closer and more effective organization under the podestà, only to yield, shortly, to the demands of the great masses, arriving through the industrial arts at the consciousness of their dignity as political beings, and to inaugurate an epoch of democratic experiments unparalleled in fervor and abundance of life, unless we travel back to the old city-states of Greece and Sicily. Of these three stages the writer purposes to treat only of the second, marked broad with the name of the podestà, and of this magistrate to investigate his origin, functions, and decay, only within the frame of the political destiny of the single city of Siena. This town of southern Tuscany — Sena Vetus, Civitas Virginis, as the tender title ran, wherewith its sons commemorated it upon their seals and coins — lies among the foot-hills of the Maremma mountains, and its ancient walls, raised to shelter it against the power of the emperors and the still more formidable forces of jealous neighbors, yet enclose it, no longer, however, with their former air of challenge, but softly, lovingly, as though only concerned now to shield it against the disruptive agencies of a new and different age, plotting and threatening, vaguely but dangerously, somewhere beyond the line of the blue hills. When this city, its walls, towers, houses, and steep-tiled roofs flush red with the sunset, the home-bound native, mounting from the valley or winding along a neighboring crest, still looks up and mutters his exclamation of delight, and the chance guest from foreign parts, moved spectator of the scene, has suddenly borne in upon him some of the deeper meanings of that conservatism for which this commune was known even in the days of its splendor, and by means of which it has retained, as no other city of its size in all Italy, its medieval character. Narrow street and sunlit square, Gothic church and battlemented palace still bear witness to the general traveler of Sienese piety and love of home ; to the student of history these characteristics reveal themselves in a particular way

by a rich and admirably-managed archive, and by the numerous contributions and researches through which a handful of local students have sought to give currency to the documentary treasures of their past. Crown and summit of these is the truly monumental publication of the constitution of 1262 by Lodovico Zdekauer, with which that distinguished jurist has furthered historical investigation in the whole medieval field of Italy, and has poured a flood of light upon that official who forms the subject of this study — the *podestà*. It is this constitution which has brought the *podestà* out of the mists of time and has made him a definite historical figure. What follows is largely founded upon the materials contained in this vast publication.

The origin of the *podestà* at Siena can no longer be regarded as surrounded with impenetrable darkness. And owing to the general similarity of Italian communal conditions, it is no over-bold assertion to maintain that what is established for Siena in this particular is sure to have more or less close application to other towns. Perhaps it will not be entirely superfluous for the writer to state at the outset his point of view toward his material. It is too common to look upon the rise of the *podestà* as a violent interruption of what certain authors are pleased to call the democratic régime of the consuls, and as a kind of monarchical usurpation, which the people, after having suffered for a while, rising in their might, brought to an end. Although it would be ungracious to say a single word against good old Sismondi, who originated this theory, it is both necessary and proper to warn against the habit of mind from which flowed most of the errors of the Swiss historian. Following a tendency of his age, he crowded the facts of the past into the convenient compartments of modern political philosophy, with the result that the authority of his name has given persistent life to the above and to many other perverse and injurious views. Surely a more reasonable and temperate path to follow is to accept the *podestà* as a perfectly natural evolution, provided, as is every effect, with a sufficient cause. The present inquiry proceeds from this hypothesis and aims merely to set down in order all the material about him which the documents will yield.

In order to understand the conditions under which the *podestà* originated, we must go back to the consular régime, in which he had his roots. Although the documents for the era of the consuls are not nearly so plentiful as for the later period of the *podestà*, and therefore much room is still left for conjecture concerning the first period of freedom, nevertheless much accurate information is now at hand concerning the origin and functions of the consuls,

chiefly through the remarkable contributions of Davidsohn. However, this article does not concern itself with the consuls; its business is with the podestà, wherefore it will not be taken amiss if the characteristics of the consular epoch, which affected the constitution of the podestà, are given here in rapid outline without an attempt at systematic evidence.

Toward the close of the twelfth century the situation was approximately the same in every Tuscan commune. The consular government was declining to its setting. Under its banner the young cities had done great deeds; they had put forward their claim to independence, and had heroically and successfully defended their young freedom against the barbaric régime represented by emperor and territorial nobility. But the consular government had perforce a loose, fortuitous character, corresponding to the haphazard conditions of its birth. Offices created or powers delegated to meet a newly-risen necessity were abandoned as soon as the conditions changed and the old necessity yielded to a new. That the first free government created on feudal soil was a rude and imperfect mechanism is not very astonishing, when we reflect that its artificers neither found help in their own practical experience, nor enjoyed the mental advantage of a long historical perspective, furnished in our own day by schools and libraries. Under these uncertain conditions the power fell naturally into the hands of the well-to-do, who combined with their riches, or rather possessed because of their riches a higher measure of enterprise and intelligence. Not that the commune is other than a democratic product, the achievement of the combined and harmonious action of all orders of citizens. But the masses seem to have yielded voluntarily, during these first steps in regions dark and unexplored, to the direction of their more influential fellow-citizens; and the superiority inherent in birth, wealth, and intelligence was firmly clinched by the fact that the first business of the new organization was to provide for its defense, and that, whenever the call to arms was sounded, only the wealthier citizens could provide horses and fight as knights or *militēs*, whereas the common people, armed as their means permitted, had to content themselves to serve as foot-soldiers or *pedites*. The constitutional development of the commune in its whole first period (1100–1200 approximately) turns about the relation of these two classes—the two military orders, dividing between them the male population of every Tuscan town. It will be well to hold fast to this simple fact, and not to allow it to be obscured by a problematical social element, which some writers have elaborately exploited. We have been told frequently of a noble faction of Ger-

man descent—heirs of the Teutonic conquerors—which was settled in all the Italian cities, and did its best to clog the wheels of municipal progress. The assumption of such a body of unassimilated foreigners in the commune of the twelfth century is based on a misunderstanding, and can contribute nothing to the solution of the constitutional problem. It will be found safer not to abandon the region of fact, and fact establishes that there were nobles resident within the pale of every commune from its earliest days of freedom, but whether they were of German or Roman descent rarely appears, and was a matter of indifference, the sole distinguishing feature of the privileged class being, as I have already shown, that it was composed of those citizens who, when the local army was called out, served as *milites*. This expensive military service was so exclusively the mark of nobility that commoners who had enriched themselves by trade to the point where they were enabled to ride to war on horseback were also regarded as *milites*. Doubtless they were snubbed at first, in the usual fashion, by the men of still older wealth, who looked upon themselves, in comparison with their upstart rivals, as an aristocracy of blood; but the rich were soon inseparably fused by virtue of their riches, without regard to the date at which they had acquired them, and at later times at least, were never distinguished, for common parlance and the law itself designated the descendants of all the great families of the consular era as *magnati*.¹ The *miles* was therefore the local noble, but the local noble owed his position not so much to birth as to wealth; and all the later popular fury which assaulted and finally brought him low, while in part, it is true, directed against his military and feudal habits incompatible with a democratic and commercial commonwealth, was more especially directed against a position of privilege founded upon material resources. It is becoming every day more and more clear that the key to the political revolutions of the Italian communes must be sought in the industrial situation,² and that the popular outcry against the noble was quite as much an attack upon the capitalist.

Here then, to recapitulate, are the features to be kept in mind of the first free or consular period of government. First, the institutions were in the experimental stage, and presented the picture of a hurried, haphazard, and faulty mechanism. Second, the power was in the hands of the wealthy class, who, because they rode to war on

¹ The most lucid explanation of how these early military divisions of the commune gave rise to the social and political classes is given by Davidsohn, *Geschichte von Florenz*, Band I., 685 ff.

² See the latest book which propounds this theory, Arias, *I Trattati Commerciali della Repubblica Fiorentina* (Florence, 1901).

horseback, were called *militēs* or knights, and gave themselves feudal and aristocratic airs. Third, the democratic movement, which had its beginnings in the consular era, although how and when is not entirely clear, was a protest on the part of the dispossessed against the privileges, both political and economical, of the noble class.

We turn now to the influences which led to the transformation of the government of the consuls into that of the podestà. This happened almost simultaneously all over Italy, but we are concerned only with Siena. The consuls of this town, always three at least in number, though often more than three, held their office for one year. They were appointed by the council — the meeting of the citizens or their delegates — and at the end of their term again reported to this body. Their administration was reviewed, and in case of malfeasance they might be severely punished. This process of audit, which was gradually extended to all other officials of the commune, was called *sindacamentum* (Ital. *sindacato*), was long retained, and is one of the most important institutional features of Sienese public life. Its existence during the consular era can be satisfactorily proved from the constitution published by Zdekauer, which, although it bears the date 1262, contains embedded in it, as the editor in his introduction shows, many of the earliest features of Sienese self-government.¹ One article² in particular shows how it was the practice with which we are here concerned — that of *sindacamentum* — which contributed to the replacement of the consuls by the podestà. We read that the podestà must solemnly swear to hold the consuls to their accounting. This passage, which in the year 1262 was without meaning, because the consuls had already been abolished for half a century, is plainly a survival from an earlier redaction of the constitution, and clearly gives a hint as to the earlier condition of affairs. Its meaning can be none other than that the podestà, before he crowded the consuls out of office, was called in temporarily, at the end of their term, to investigate their conduct. Probably the council came to consider itself unequal to the task of *sindacamentum*, or at least became impressed with the convenience of having the audit carried out by an appointee who had its confidence. Since there were here, as everywhere and always, people who had an ax to grind, the choice of this person, charged to act as supreme arbiter,

¹ The constitution of 1262 is of that year in the sense that it was transcribed on parchment in that year, not in the sense that the institutions which it enumerates and defines were then originated. On the contrary, Zdekauer brilliantly shows that many of them go back a century, and that most of them were created at the call of some necessity arising in the preceding hundred years.

² *Distinctio II. 174* : Et post depositum eorum officium constringam consules communis et placiti, qui modo sunt, et omnes eorum officiales, ad rationem faciendam, etc.

must soon have become a matter of the highest importance ; and it is only natural that the council should have been prompted to look beyond the agitated sphere of city politics to some disinterested foreigner to fill the post. And it is no less natural that on finding such a foreigner, one who filled all the requirements, especially the one of non-partisanship, the council should have been inclined, not only to have him audit the administration of the consuls, but also to let him continue in office in their stead.

Here then is an interesting hint as to the means by which the podestà was introduced into the Sienese government, but, of course, this suggestion does not exhaust the matter. Other circumstances concurred to effect the change. The consulship, as a many-headed executive, had been proved everywhere to have its inconveniences. Division of authority among many fostered cliques and nourished feudal rancors¹; and in case of war, the action of the city was weakened by conflicting counsel.² Finally, consolidation, the progress from a loose to a more compact organization, must have been operative here, as it would be with every active and ambitious commonwealth. The upshot of all these influences was that at the turning of the twelfth century all the Tuscan communities are found to be experimenting with the new office, and after a period of uncertainty, during which the choice fluctuates between consuls and podestà, definitely incorporate the new magistracy in their system.

According to the Sienese Chronicle of Andrea Dei,³ the first podestà of Siena belongs to the year 1199. He was Orlando Malapresa of Lucca, therefore a foreigner. During the next two years, 1200–1201, Filippo Malavolti, a native nobleman, held the coveted post, while during 1202 and 1203 the consuls crop up once more, and in 1209⁴ are again resorted to. As late as 1230 we find not one but two podestà. Here then may be observed a very uncertain practice, which seemed to be in no hurry to congeal into hard and fast forms. Out of the confusion so much is clear : shortly after 1209 the podestà became a fixture in Siena, and at the same

¹ Of this discord among the great families for the possession of the consulship the chronicles preserve a confused record. For instance in 1177 the city of Florence was partially reduced to ashes because of such a quarrel. See Hartwig, *Quellen zur Geschichte von Florenz, Annales Florentini*, II. 69 ff. ; Davidsohn, I. 555 ff.

² That the weakness of the many-headed executive was understood is proved by the appointment in 1151 at Siena, for a brief period, of a kind of dictator, one Scudacollus. See Ficker, *Forschungen zur Reichs- und Rechts-Geschichte Italiens*, IV. 120.

³ Published by Muratori, *Rerum Ital. Scriptores*, XV. The very valuable and ancient material in this chronicle has never been separated from its later accretions. Old and new are welded together in one confused mass. In its present state it must be used with caution.

⁴ Ficker, IV. 220, 223.

time opinion set definitely toward a foreign rather than a native choice. That the authorities, however, were unwilling to have their hands bound in this matter is proved by an article of the constitution of 1262, according to which the council, half a century after the institution of the podestà of foreign birth, still reserved to itself the right to decide each year whether the new podestà was to be a foreigner or a Siennese.¹ The end of this period of experimentation was that Siena, like all her neighbors, raised annually a foreign nobleman or *miles* to the post of chief executive, that is, instituted the *podestà forestiero*, whom she then retained under some form or other for a long time to come.

What were the functions of the new sovereign? The mantle of the consuls seems to have fallen so naturally upon the shoulders of the podestà that no evidences of any attendant revolutionary disturbances have come down to us. For such, indeed, it would be difficult to discover any adequate reason. The great families, fortified in the councils, controlled the destinies of the city in the consular era; with the podestà they introduced a small reform, affecting alone the supreme office in the state, and, for the rest, everything continued as it was. But the new ruler did not come into an absolutely undiminished heritage. The consuls being many and their functions numerous, they had been obliged to divide their duties among themselves, and one section—the *consules placiti*²—had presided over the *placitum*, or court of voluntary justice. These *consules placiti* were continued under the podestà—in fact, still existed, a strangely dwindled relic of the consular age, among the generations of the Renaissance. The other functions, however, that had been exercised by the consuls were taken over by the new official. To enumerate these functions in their plenitude, the podestà, as chief executive, carried out the legislative measures of the general council, and, above all, led the citizens to war; he was the head of the judicial system; and he had a not unimportant direct share in legislation, chiefly by his issuance of police ordinances or bans. These powers will be examined further on with more detail, when, with the constitution of 1262 in hand, we can exactly define his position at this later period; for the earlier period, for which no constitution exists to help us, suffice it to note, as above, that the podestà was the heir of the consuls, therefore the representative of the aristocracy in power, and that in addition to purely executive, he exercised also judicial and legislative functions.

¹ Constitution, I. 127.

² As to rights and duties, see their constitution, published by Zdekauer, *Il Constituto dei Consoli del Placito del Comune di Siena* (Siena, 1890).

And now, having noted the fullness of the podestà's original powers, we are obliged to give attention to the great social and political movement that began almost simultaneously with the establishment of the new chief, and immediately threatened and assaulted his position and the hitherto unshaken dominion of the *milites*. The people — artisans and smaller tradesmen — enter upon the stage, resolved to win political recognition. For this purpose they organized, conscious that in their union lay their strength; and if the records furnished us the date of this event, we could fairly call it the birth-year of democracy, the new democracy, as we understand the term, in the city of Siena. The earliest document¹ that refers to a *societas populi senensis* is of the year 1213, but the chronicler Andrea Dei² speaks of a new military organization of the people as early as 1209, and, according to this same authority, the people in 1212 were already so bold as to raise a tumult against the nobility, which St. Francis of Assisi, who happened to pass through Siena about that time, gently interposed to quiet. Although the early development of the new society is, owing to the scarcity of documents, wrapped in some obscurity, its character and aims soon appear with sufficient clearness. The *societas* or *universitas populi senensis* made itself the rallying-point of the Sienese masses, who by being excluded from the legislative council, known in Siena as the Council of the Bell, were deprived of political rights. The commune, nominally an affair of the whole citizen body, was really the privileged possession of the councilors of the Bell, and of the officials whom the council appointed; and the *populus* was organized for the purpose of conquering the offices and the state, and administering them for its own ends. It is to be constantly kept in mind that *populus* in this new sense means a political party, and must not be confused with the older use of the word people, designating not a class, but the entire body of residents. The plan of campaign of the people's party, if we may judge of its policy by its deeds, did not look forward so much to revolutionary action, as to a permissible political agitation. The Council of the Bell ruled, but its will was carried out by temporary committees known as *balie*, or by officials in offices that necessity had made permanent, but which at first had been nothing but *balie*. In this connection, it is well to be reminded that the consulship itself was in its origin only a *balia*, that is, an authority temporarily delegated by the meeting of the citizens. Now the leaders of the *populus* seem to have argued — at least the

¹ Zdekauer, introduction, xxxiii.

² Muratori, XV.: E in questo anno (1209) si cominciò a fare le campagne per la città delle contrade. See also note: Ed era fra'l popolo e nobili gran nemicizia e (St. Francis) fè fare pace e unione fra loro.

whole history of the party shows that this was the popular determination — that they should insinuate their own partizans gradually into the *balie* and offices, and end, not by overthrowing the commune, but by appropriating it.

The first great success was achieved in connection with the *Ventiquattro*, the Twenty-four. The first documentary mention of their existence is of the year 1238, when they are designated as *sindici et procuratores universitatis populi Senensis*.¹ Why, in view of this definite statement, Zdekauer should express the opinion that half of their number was of the noble class, is not clear. He cites in his support Paoli, but Paoli has no other evidence to offer than the incredibility of its being otherwise.² Until, therefore, some proof be forthcoming, it will be better to stick to the plain meaning of the Latin designation, and to look upon the Twenty-four as being recruited exclusively from the *populus*.³ And, once established, the Twenty-four looked out zealously for the interest of their clients, and proceeded vigorously about that which was evidently their chief business, the conquest of the commune. In 1240 they forced their way into the Council of the Bell, not without serious resistance on the part of the conservative elements⁴; and if they did not immediately assume control of that body from that year, they grew in influence so rapidly that to the Sienese of a later time the whole period from the moment of their entrance into the council to their fall, occurring in the year 1270, seemed to be stamped with their name. It is reasonable to suppose, however, that they were not from the first that directive power in the council which they afterward became. There was, for instance, the podestà — in 1240 still a power to be reckoned with. But, on the other hand, the acquisition of power and influence began immediately, and continued without intermission until the offices, *balie*, and the state itself were, in

¹ Zdekauer, introduction, l. See also lxxv.

² Paoli, "I Monti nella Repubblica di Siena," in *Nuova Antologia*, 1891. A statement in Andrea Dei (Muratori, XV.) under the year 1212 supports Paoli's view, but it is manifestly of fourteenth-century origin, and therefore of small weight. The announcement under the year 1233, "e fecesi in Siena e Ventiquattro," is far more trustworthy — a simple statement of origin, leaving the question of composition undecided.

³ This view is ably defended by Salvemini, as against Paoli and Zdekauer, *Arch. Stor. Ital.*, Serie V., Vol. 21, p. 371 ff. Further support of it is furnished by the title that the Twenty-four — whose political character had meanwhile suffered no change — use in the year 1256: XXIII partis ghibelline *populi civitatis et comitatus Senarum* (Zdekauer, introduction, lxxv). Another indication is found in a so-called *librum XXXIII*, being a list of those enrolled in the people's party (*Ibid.* lxxix). Why should the Twenty-four keep such a list, unless they were absolutely identical with the people's party? Also it is to be noted that the Twenty-four elect the captain of the people (*Ibid.*, I. 151). Would that business be entrusted to a committee, half of which are noblemen and enemies?

⁴ Muratori, XV., under the year 1240.

one way or another, directly or indirectly, inspired and dominated by the new will. It would take us beyond the scope of this study to set down all the evidences of this growth furnished in the documents. Suffice it here to give a bald enumeration of the more important advantages which they gained. Let the reader remember that every upward step of the *populus* buttressed the position of their agents, the *Ventiquattro*, in the council, and that, politically, *populus* and Twenty-four are one.

In 1242 the *libra* was extended to citizens outside the walls (*cives selvatici*). The *libra* was the new tax-system based on movables and immovables, that is, it was a tax scaled according to a citizen's total wealth. It was introduced within the walls early in the century (Andrea Dei says ² in 1202), and supplanted the feudal hearth-tax, which, falling alike on rich and poor, had been a manifest hardship for the latter. The *populus* naturally stood behind the more modern system of the *libra*, and every extension of its application over the Sieneze possessions must be looked upon as a victory over the magnates. In 1253 the people, satisfied up to that time with the looser system of three rectors, corresponding to the three *terzi* or main sections of the city, gave themselves a closer organization by the election of a single head, called captain.³ And now success follows success—an uninterrupted chain. From 1255 on we have the records of a firmly established Council of the People,⁴ which legislates nominally for its own members, that is, for the party of the people, but tries to force and soon successfully forces its ordinances upon the commune, thereby giving them the validity of measures passed by the Council of the Bell. In the same year (1255)⁵ the *populus* deprives the podestà of his right of issuing bans, and in 1256 the *libra* is applied to the whole Sieneze dominion.⁶ And now the final triumphs: from the year 1257 one half of the *emendatores*, who are the *balia* or committee charged with the annual revision of the constitution, must be *popolani*⁷; in 1258 many of the officials of the people's party are already paid out of the city treasury, and therewith acquire a standing with the officials of the commune⁸; and in 1262 half of all officials elected in the Council of the Bell must be chosen from the party of the people.⁹

¹ Zdekauer, introduction, lxviii, 60.

² Muratori, xv.

³ *Ibid.*

⁴ Zdekauer, introduction xxv ff.

⁵ *Ibid.*, lxxv, 70.

⁶ *Ibid.*, lxxxiii.

⁷ *Ibid.*, lxxv, note 1.

⁸ *Ibid.*, lxxxv, 81.

⁹ Zdekauer, constitution, I. 518.

These then are the leading steps by which the people's party invaded and took possession of the commune. Only one thing remained to be done, and that was to claim a share in the legislative privileges of the Council of the Bell. This pretension was satisfied about 1262, for in the constitution of that year the Council of the People is called to a common session with the Council of the Bell whenever any of the more important political and legislative projects are to be discussed.¹

The bearing of this apparent digression, treating of the victorious campaign of the people's party and their twenty-four paladins, on the question before us, the question of the podestà, must leap into view. Till 1240 the podestà enjoyed undisturbed the full sovereign rights with which he had been endowed as the successor of the consuls. From that year, however, the year when the people introduced the Twenty-four into the Council of the Bell, his star began to pale. To distinguish: hitherto we have dealt with the podestà in his first period, the period of his undisputed sovereignty, extending from the beginning of the century to the year 1240; we have now to examine his decline, which from 1240 continued uninterruptedly until 1262—a point at which we can conveniently halt, and with the constitution of that year before us, examine accurately into the position to which he had been reduced.

In the year 1250 Uberto dell'Andito, a Lombard from Piacenza, was podestà of Siena. He was a man of much political experience and great energy of will, and left an indelible mark upon the Sienese constitution.² The accidental character of the administration, the waste and loose ends which littered the offices of a government, building under stress of daily necessity and without a fixed plan, must have been abhorrent to him, for with more than common courage he undertook a thorough housecleaning. He brought into one book the scattered police ordinances³ of the time (*banna renovata*), making therewith a beginning toward a regular criminal code, and he rendered an important constitutional service by a collection⁴ of the statutes of the various offices of the state (*breve degli ufficiali*). The *banna* of a podestà could contain of right only such decrees and threats of penalties as had been duly voted by the legislative branch, but Uberto ventured to draw upon that discretionary power inherent in every strong executive, and in many cases ventured to

¹ *Ibid.* See index, under head *consilium campane et populi*.

² See historical notice of him in Zdekauer, introduction, lxxi.

³ Published in part by Puccinotti, *Storia di Medicina*, II. Leghorn, 1855.

⁴ Published in toto by Banchi, *Arch. Stor. Ital.*, Serie 3, Tomo III., 1866. The publication both of *breve* and *banna* leave much to be desired. The originals are of course preserved in the Archivio di Stato at Siena.

modify the fines established by law. His proceeding was quite in accordance with contemporary usage, but seems to have aroused the ire of the new power in the state, the *societas populi*. At any rate this party had no sooner acquired a more aggressive form by giving itself a captain (1253), than it abolished the podestà's power to exercise an independent judgment in the issuance of bans.¹ This occurred in the year 1255, and it seems probable that to the same year belongs the prohibition of the podestà's engaging in any secret practices with the constitutional committee.² The existing record of this prohibition is of 1262, when it appears in the constitution of that year (Distinctio I. 142), but it is safe to assume that it was adopted some years before, in the time of the popular agitation against the legislative transgressions of the podestà. The total effect of these measures was to strip the city sovereign from this time forth of all legislative power. Thus the extraordinary energy which Uberto dell'Andito brought to bear upon the state, and the many services which he rendered, may be said to have undermined by a process of reaction the office which he desired to strengthen.

But the *populus* was far from being satisfied. The effort to wrest the scepter from the aging sovereign continued, and was now directed upon his military power. In the first half of the century the podestà had led the army of the republic into battle, but now he had a rival in the captain, the opposition party's natural head. Just how such a double leadership, sure to be full of suspicion and bitterness, was in practice harmonized with the interests of the state, can now no longer be made out, but an important suggestion, at least, is furnished by the constitution of the year 1262 (Distinctio I. 221). Here we read that from a military point of view podestà and captain are exactly equal, for either one or the other, but not both, shall be chosen to lead the host to war. This provision, to be sure, is comparatively late, being of the year 1262,³ but in a still earlier period there is evidence of the podestà's shaken military position, in his reduction, on one famous occasion, to complete military nullity. In the year 1260 the state of Siena was convulsed with its capital medieval crisis. The Florentines were on the point of taking

¹ See deliberation of the Council of the People, Zdekauer, introd., lxxv, note 5. This merely party measure was, according to the practice of the *populus*, afterwards imposed upon the constitutional committee of the Council of the Bell and incorporated in the constitution, where it is to be found, I. 181.

² It can be proved that the podestà interfered with the constitutional committee (*emendatores*) as late as 1230. See Zdekauer, introduction, xix, note 1. At this time such interference was entirely regular, and probably continued without protest on the part of anybody until the above-mentioned time.

³ It is really an addendum to the constitution of 1262, and may therefore belong to one of the years immediately following.

the city, when they were defeated just outside the walls at Montaperti. Here, if ever in the history of Siena, there was occasion for military leadership, and an opportunity for a sovereign of somewhat tarnished luster to revive a decaying prestige. But what do we find? The very name of the podestà of 1260, one Franciscus de Troysio,¹ is hardly preserved in the not unabundant records and chronicles that have come down to us,² and from these same sources we learn that the splendid victory of the Sienese was won under the leadership of the Count Giordano, King Manfred's vicar, and of Aldobrandino Aldobrandeschi, a Ghibelline nobleman of the Sienese sphere of influence. Since the podestà had no direct and visible share in the great triumph of Montaperti, it might be surmised that he made himself felt in other ways, for instance, in the political direction of the state. But this is disproved by the records, which concur to show that the governance of Siena in 1260 was entirely in the hands of the Twenty-four. The pertinence of the occasion for a capable and ambitious executive officer cannot be denied. That the podestà could not seize the convenient tide at the moment of its flood proves that he was moribund, and his decline an ineluctable consequence of the political evolution of Siena.

With legislative powers gone, with military powers sapped and dying, he might have retained a not unworthy position, if he had held fast to the political direction of the state. But this had passed, as the history of Montaperti shows, and as has just been said, to the Twenty-four, the *Signori Ventiquattro*. Already in 1260 they and they alone gave the city its political impulse, and this newly-won hegemony was fortified and secured in a hundred ways in the constitution of 1262. Its most vigorous expression is found in that article³ wherein the Twenty-four are called upon to hold a secret meeting once a month, to determine, practically like a modern ministry, the new measures to be taken before the council for deliberation, and to be put into execution by the state.

Surely, comparing him with what he was in 1240, the podestà in 1262 presented a much-shrunken figure. Of his once ample

¹ This is the form of the name given in the letter of King Manfred, who sent him as podestà. See the letter of Manfred in Paoli, 76. The name has many variants. The chronicler Ventura spells it Troisi (Porri, *Miscellanea Senese*, 1844). *The Cronica Senese* gives the name as Trevizi (Muratori, XV.).

² The most readable of the chronicles on Montaperti are those of Aldobrandino and Ventura, both published by Porri, *Miscellanea Senese*, 1844.

³ Zdekauer, I. 172. Other important advantages gained at about the same time and clinching the domination of the Twenty-four over offices and state are: The Twenty-four watch over the household of the podestà like a special police, and dismiss any member thereof on suspicion (I. 150); they elect the captain of the people (I. 151); there is an appeal to the Twenty-four from the decision of the captain (II. 167).

rights there now remained to him nothing but the judicial functions, by reason of which he presided over certain courts, and a kind of honorary sovereignty, which he exercised as the executive agent of the legislative council and the visible symbol of the city's unity. In the constitution of the year 1262, with its sonorous legal phraseology, he still looms large, but if we look close we find that, though he reigns, he does not govern, being bound about and strait-jacketed with provisions and clauses that leave him hardly room to breathe.

In the famous constitution of 1262, to which the chronological development of our subject has now brought us, and in the light of which I purpose to examine in detail the position of the podestà at that time, Siena possesses a unique document. Constitutions and constitutional fragments of other medieval Tuscan towns there are, which antedate it by a generation and more, but no other constitution of the thirteenth century seems to have been so broadly and intelligently planned, or has come down to us in a more handsome form or in a more perfect state of preservation.¹

From the keen and learned introduction which Zdekauer has prefixed to his publication of the document we learn how it grew gradually to its present bulk; that though it bears the date of 1262, being revised and approved in that year, it contains a nucleus which reaches back to the consular era of the previous century; and that hardly a year had passed since then which had not brought its small and patient increment. The original element, the seed of the constitutional plant, was the *breve*, a kind of summary of the obligations sworn to by the consuls on assuming office; as other offices developed in the young municipality, a *breve* was drawn up for them too; and finally, a fusion of all the *brevia* produced the general constitution on which the podestà, as the thirteenth-century sovereign, took the oath, and which was therefore frequently called by his name. Thus the constitution of 1262 could also be called—for such indeed it was—the *breve* of the podestà of that year. This evolutionary character of the document of 1262 should be kept in mind, and the error guarded against of looking upon the arrangements for the podestà as necessarily or even probably new provisions. There is furnished by many of the articles abundant internal evidence that they go back a hundred years and more. On the other hand, such as they stand, they were binding only upon the particular podestà for whose behoof they were drawn up, and together with the marginal adjuncts made by subse-

¹ Preserved at the Archivio di Stato, Siena—Serie degli Statuti, No. 2—and held in as high regard as the miracle-working relic of a Capuchin monastery.

quent constitutional boards, the annually elected *emendatores*, were in actual force, until, at most, the year 1269. Tuscan constitutions in those days had a tentative and fugitive character, to a degree which invited the scorn and ridicule even of contemporaries,¹ and which to us moderns with our need of social guaranties seems to be nothing less than fury and sacrilege.

The podestà, like all officers of the commune, was elected in the Council of the Bell.² Three members, designated by lot, elected three others, who drew up a list of candidates and submitted it for approval to the council. This system, mixed of lot and election, was planned to secure the state against the intrigues of ambitious politicians. The candidate honored by the first place on the list was thereupon informed by special embassy, and, in case he accepted, had to be in Siena *in festivitate omnium Sanctorum* (November 1). The office was to last a year; the pay, though it might vary with each appointment, was exceedingly liberal. As there was yet no town hall—the present *palazzo pubblico*, one of the most noble public edifices in the world, was begun only toward the end of the century—he was given forty *libræ et non plus* for the rental of a private residence. Here he must dwell with his household (*familiars*), in which his special legal adviser (*judex*), a master of ceremonies or majordomo (*senescalcus*), and a knightly attendant (*miles*) were prominent figures.

Although expected to be in Siena on the first of November, and sworn in by the podestà shortly after his arrival, his term did not formally begin until January 1. The interval of two months was probably useful in acquainting him with the duties of his office and with the particular local conditions. But once in harness his work was by no means light. He called together the Council of the Bell, presided at its sessions, and was charged with the execution of all constitutional and legislative enactments. He held the honorary presidency of both the civil and the criminal courts, in direct charge respectively of the *judex comunis* and the *judex maleficiorum*. In these courts the practice was for the judge in charge

¹ See Dante, *Purgatory*, VI. 127–151 :

“ Fiorenza mia, ben puoi esser contenta
Di questa digression che non ti tocca,
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.
.
Quante volte del tempo che rimembre
Legge, moneta, officio e costume
Hai tu mutato, e rinnovate membre.”

² The following facts about the podestà are all drawn from *Distinctio I.* of the constitution. The exact reference will be given only where the information furnished by the index is not sufficiently clear.

of the trial to find the verdict, which the podestà then publicly announced, and carried into execution through his special police agents called *balitores*. In case of war he led the host, but this duty, as we have already seen, might also be delegated to the captain.

Very remarkable was the element of suspicion in which he was steeped, and the precautionary measures by which his independent activity was surrounded and checked. The podestà, we have learned, was a foreigner, largely because a foreigner might be supposed to bring an unprejudiced mind to bear upon the local feuds. It was all-important that he favor no section of the city nor any family interest, but remain aloof from and above the local political issues. This idea must have been constantly present in the minds of the constitution-makers. Besides they had to secure the city against any possible attempt of the annual sovereign to possess himself of power permanently. For all these reasons, he was harassed with the most astonishing police regulations. The constitution waxed very solemn on this head. Let his house be open and undefended; let there be no *portonarius* or *custos*. Further, there must be no secret conference at night; in fact, the podestà shall be in his house *post trinam pulsationem campane* (the curfew-bell) and leave it under no conditions except on business of the commune.¹ He must accept no present, for a present might be made to do the service of a bribe. He shall not even go so far as to feast any one in his house, and, of course, to accept an invitation to dine with a townsman was out of the question.² A curious evidence of the jealousy of the three city sections (*terzi*) is furnished by the article³ prescribing that the successive podestà must reside in the *terzi* in rotation, thus favoring all alike; and the climax is reached in the suspicious vigilance that surrounded him and his household, in the measure already noted in another connection,⁴ by virtue of which the Twenty-four could dismiss any one of his *familiaries* the moment his attachment to Siena seemed doubtful to them.⁵

The natural conclusion of this rigorous surveillance was the *sindacamentum* — the revision already explained⁶ — terminating his year of sovereignty. He had to pledge himself to stay in Siena eight days after the end of his term, when his administration was

¹ I. 169.

² I. 167: Et non comedan et bibam cum aliquo vel aliquibus civibus Senensibus, nec eos mecum vel ad mensam meam . . . comedere et bibere permittam.

³ I. 211.

⁴ Page 259, note 3.

⁵ I. 150.

⁶ Page 251.

reviewed by the four *provisores* — the regular treasury officials — and every charge of misconduct preferred by any citizen whatsoever was carefully investigated. To give force to this measure, 200 *libræ* of his salary were withheld until the process of audit was closed and the accounts declared satisfactory.¹ A partial mitigation of these hard terms must have lain in the circumstance that the *sindacamentum* was not the podestà's special privilege, but was the common lot of all office-holders.

The podestà proved to have a long life and figured in the constitutional history of Siena for many generations to come. If we found his political direction of the state gone in the year 1262, he was none the less the titular sovereign. It is an evidence of the persistence of legal forms that this titular sovereignty is still conferred upon him half a century later by the constitution which bears the date of 1309-1310, though this document² makes it perfectly clear that the power in the state rests now with another body representing an entirely new experiment in government, to wit, the nine representatives of the merchant class, officially called the *Nove*. A special section (*Distinctio VI.*) in the constitution of 1309-1310 is entirely devoted to their functions. From the Twenty-four in the year 1240 to the *Nove* — the Nine — in 1309-1310, the political power in Siena had frequently changed hands, but in all that time, and especially from the year 1262 on, it cannot be said to have rested with the podestà. Still the old fiction of his supremacy survived in the laws, probably, first, because the Twenty-four, or the Thirty-six, or the Nine, however the successive bodies of control might be called, still had the need of an executive agent; and, secondly, because they found it convenient to conceal their partizan direction behind the knightly person of the podestà, who was surrounded with honors and ceremonies, and kindly consented to stand before the people for the one and undivided character of the state. Nevertheless such a fiction deceived no one, and, to the Sienese, the government of the city was, from the rise of the Twenty-four, with this body and with their successors and not with the podestà.

But yet another reason accounts for the fact that the podestà continued to exist, even when most of his earlier occupations had long been canceled. He had always had an honorary presidency in the two main courts, the civil and the criminal; as the need of an

¹ I. 149, 210, 520.

² The constitution of 1309-1310, in the Italian language, is a translation of the constitution of 1296, which in 1309 was still in vigor and so remained until 1334. The constitution that bears the date of 1309-1310 is therefore really the constitution of the period 1296-1334. It has been published by Lisini, *Il Costituto del Comune di Siena*, 2 vols. (Siena, 1903).

impartial justice was perennial, and as to the minds of that day this impartiality seemed to be best assured by a foreigner, it is only natural that the podestà should have been retained as the supreme judge, and in the period of his decline have become more and more identified with this office. It is as a judge that he plays a rôle to the generations after Montaperti and continues to play to the end of the middle ages. But with the constant reforms going on in the constitution of the courts, reforms due to the increasingly complicated legal relations of men in a developing society, these judicial functions of the podestà could not remain the same from age to age. Comparing the constitution of 1262 with that of 1309-1310, it becomes plain that in the course of half a century the courts have been reorganized, the laws revised and multiplied, and the legal position of the podestà modified in various ways; and this process continued throughout the fourteenth century.

But through this phase, which belongs to the judicial story of Siena, we have no further interest in following this official. We found him a sovereign and traced his gradual decline in that capacity; and there we leave him, stripped of the regalia, but tenaciously holding fast to his judicial honors, with such success, that in one form or another he continued to enjoy them far into a time that, owing to the rapid and continual political metamorphoses of the republic, retained but a confused memory of his early significance.

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